

**PUBLIC NOTICE
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
CITY OF SAN JOSÉ, CALIFORNIA**

Ruby Estates, File Nos. GP09-08-03 and PDC09-028.

A General Plan Amendment to change the land use designation on the subject site from Very Low Density Residential (2 DU/AC) to Low Density Residential (5 DU/AC) and a Planned Development Rezoning from A(PD) Planned Development District to A(PD) Planned Development District to allow up to 10 single family detached residences on an approximately 2.5 gross acre site located on the east side of Ruby Avenue, approximately 50 feet northerly of Murillo Avenue (2494 Ruby Avenue). The project is located in Council District: 8.

California State Law requires the City of San José to conduct environmental review for all pending projects. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. Based on an initial study, the Director of Planning, Building & Code Enforcement has concluded that the project described above will not have a significant effect on the environment. The project location **does not** contain a listed toxic site.

The purpose of this notice is to inform the public of the Director's intent to adopt a Mitigated Negative Declaration for the proposed project on March 25, 2010, and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **March 10, 2010** and ends on **March 30, 2010**. Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance.

The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 200 East Santa Clara Street, San José CA 95113-1905. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 150 E. San Fernando St, San José, CA 95112, and online at <http://www.sanjoseca.gov/planning/eir/MND.asp>

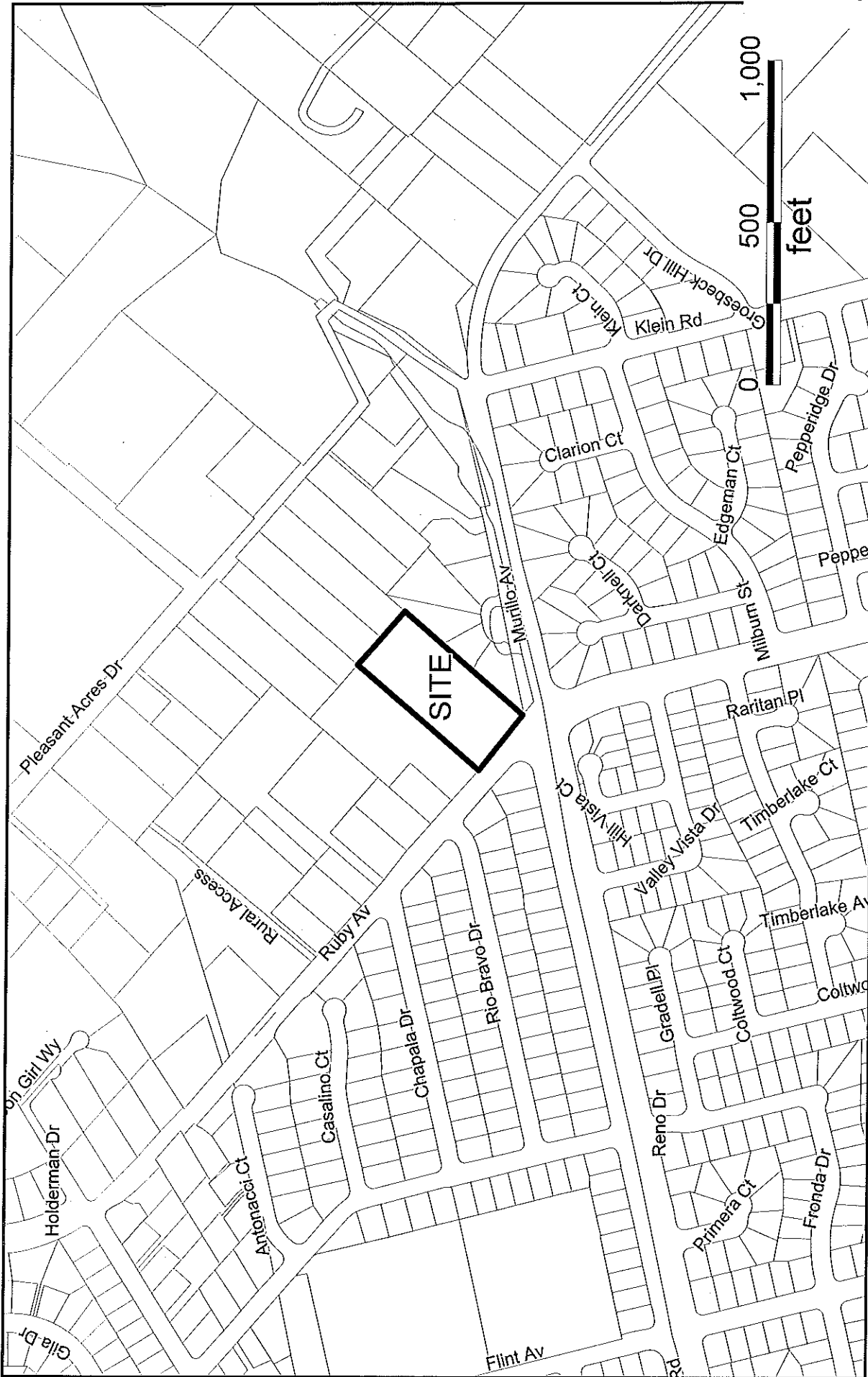
For additional information, please call John Davidson at (408) 535-7895.

Joseph Horwedel, Director
Planning, Building and Code Enforcement



John Davidson
Deputy

Circulated on: March 9, 2010



File No: GP09-08-03

District: 8

Noticing Radius: 1000 feet

08/27/2009

DRAFT
MITIGATED NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Ruby Estates

PROJECT FILE NUMBERS: GP09-08-03 and PDC09-028

PROJECT DESCRIPTION: Planned Development Zoning from A(PD) Planned Development District to A(PD) Planned Development District to allow up to 10 single family detached residences on an approximately 2.5 gross acre site.

PROJECT LOCATION & ASSESSORS PARCEL NO.: East side of Ruby Avenue, approximately 50 feet northerly of Murillo Avenue (2494 Ruby Avenue); APN 652-11-010

COUNCIL DISTRICT: 8

NAME OF APPLICANT: Ruby Estate, LLC

MAILING ADDRESS AND PHONE NO. OF APPLICANT CONTACT PERSON:
Mahmood Ghori, Ruby Estate, LLC, 3331 Alfonso Drive, Concord, CA 94518
408-723-2177

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

I. AESTHETICS –

- The project design will conform to the City's Residential Design Guidelines.
- Lighting on the site will conform to the City's Outdoor Lighting Policy (4-3).

II. AGRICULTURE RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

III. AIR QUALITY –

- The following construction practices will be implemented during all phases of construction to prevent visible dust emissions from leaving the site.
 - Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses will be kept damp at all times, or will be treated with non-toxic stabilizers or dust palliatives;
 - Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
 - Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
 - Sweep daily, or more often if necessary (preferably with water sweepers), all paved access roads, parking areas and staging areas at construction sites; water sweepers will vacuum up excess water to avoid runoff-related impacts to water quality; and
 - Sweep streets daily, or more often if necessary (preferably with water sweepers), if visible soil material is carried onto adjacent public streets

IV. BIOLOGICAL RESOURCES –

- Any tree that is removed will be replaced with the addition of a new tree(s) at the ratios shown in the following Tree Replacement Ratios table.

Tree Replacement Ratios

Diameter of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
18 inches or greater	5:1	4:1	3:1	24-inch box
12 to 17 inches	3:1	2:1	None	24-inch box
Less than 12 inches	1:1	1:1	None	15-gallon container

x:x = tree replacement to tree loss ratio

Note: Trees greater than 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

- The species and exact number of trees to be planted on the site will be determined at the development permit stage, in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.
- Replacement trees are to be above and beyond standard landscaping; required street trees do not count as replacement trees.
- In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction

of the Director of Planning, Building and Code Enforcement, at the development permit stage:

- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees.
 - An alternative site(s) will be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building and Code Enforcement. Contact Jaime Ruiz, Parks, Recreation and Neighborhood Services Landscape Maintenance Manager, at 975-7214 or jaime.ruiz@sanjoseca.gov for specific park locations in need of trees.
 - A donation of \$300.00 per mitigation tree will be paid to Our City Forest for in-lieu offsite tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. Contact Rhonda Berry, Our City Forest, at (408) 998-7337 x106 to make a donation. A donation receipt for offsite tree planting will be provided to the Planning Project Manager prior to issuance of a development permit.
- The following tree protection measures will also be included in the project in order to protect trees to be retained during construction:

Pre-construction Treatments

- The applicant will retain a consulting arborist. The construction superintendent will meet with the consulting arborist before beginning work to discuss work procedures and tree protection.
- Fence all trees to be retained to completely enclose the tree protection zone prior to demolition, grubbing or grading. Fences will be 6-foot chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction are completed.
- Prune trees to be preserved to clean the crown and to provide clearance. All pruning will be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture.

During Construction

- No grading, construction, demolition or other work will occur within the tree protection zone. Any modifications must be approved and monitored by the consulting arborist.
- Any root pruning required for construction purposes will receive the prior approval of, and be supervised by, the consulting arborist.
- Supplemental irrigation will be applied as determined by the consulting arborist.
- If injury should occur to any tree during construction, it will be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
- No excess soil, chemicals debris, equipment or other materials will be dumped or stored within the tree protection zone.
- Any additional tree pruning needed for clearance during construction must be performed or supervised by an Arborist and not by construction personnel.
- As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near trees will be designed to withstand differential displacement.

- If possible, construction should be scheduled between September and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified biologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys shall be conducted no more than thirty (30) days prior to the initiation of these activities. The surveying biologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the biologist shall, in consultation with the California Department of Fish and Game, designate a construction-free buffer zone (typically 250 feet) around the nest, which shall be maintained until after the breeding season has ended and/or a qualified biologist has determined that the young birds have fledged. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading or building permit.

V. CULTURAL RESOURCES –

- In the unlikely event that evidence of unknown prehistoric cultural resources is discovered during construction, work within 50 feet of the find will be stopped to allow adequate time for evaluation and mitigation, and a qualified professional archaeologist called in to make an evaluation; the material will be evaluated; and if significant, a mitigation program including collection and analysis of the materials prior to the resumption of grading, preparation of a report and curation of the materials at a recognized storage facility will be developed and implemented to the satisfaction of the Director of Planning and submitted to the City's Environmental Principal Planner.
- Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California: In the event of the discovery of human remains during construction, there will be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner will be notified by the developer and will make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner will reinter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
- Any Native American human remains that are discovered and would be subject to disturbance will be removed and analyzed, a report will be prepared, and the remains will be reburied in consultation and agreement with the Native American Most Likely Descendant designated by the Native American Heritage Commission. Prior to obtaining a Building Permit, a copy of the report will be submitted to the City's Environmental Principal Planner to the satisfaction of the Director of Planning.

VI. GEOLOGY AND SOILS --

- A Certificate of Geologic Hazard Clearance has been obtained from the Director of Public Works prior to any discretionary approval for all development in areas shown on the Geologic Hazards Ordinance map; and any Conditions of Clearance including, but not limited to, measures identified in the geologic evaluation for slope stabilization, surface and subsurface drainage control, offsite improvements, use restrictions, erosion control and/or maintenance guarantees for private improvements contained therein shall be implemented as specified. *A Certificate of Geologic Hazard Clearance was issued for the project on February 24, 2010.*
- A City-approved Erosion Control Plan will be developed and implemented prior to approval of a grading permit or Public Works clearance with such measures as: 1) the timing of grading activities during the dry months, if feasible; 2) temporary and permanent planting of exposed soil; 3) temporary check dams; 4) temporary sediment basins and traps and/or 5) temporary silt fences.
- The proposed structures on the site will be designed and constructed in conformance with the latest Uniform Building Code Guidelines for Seismic Zone 4 to avoid or minimize potential damage from seismic shaking on the site.

VII. HAZARDS AND HAZARDOUS MATERIALS --

- If a well is found during grading operations, a well destruction permit will be obtained from the Santa Clara Valley Water District, and the well will be destroyed in accordance with District standards.
- If a septic system is found during grading operations, it will be abandoned in accordance with the requirements of the Santa Clara County Sewage Disposal Ordinance.

VIII. HYDROLOGY AND WATER QUALITY --

- Prior to the commencement of any clearing, grading or excavation, the project will comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit, to the satisfaction of the Director of Public Works, as follows:
 - The applicant will develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities; and
 - The applicant will file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB) The project design will conform to the City's Residential Design Guidelines.
- The project will incorporate Best Management Practices (BMPs) into the project to control the discharge of stormwater pollutants including sediments associated with construction activities.
- The project applicant will comply with the City of San Jose Grading Ordinance, including erosion and dust control during site preparation and with the City of San Jose Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The following specific BMPs will be implemented to prevent stormwater pollution and minimize potential sedimentation during construction:

- Restriction of grading to the dry season (April 15 through October 15) or meet City requirements for grading during the rainy season;
 - Utilize onsite sediment control BMPs to retain sediment on the project site;
 - Utilize stabilized construction entrances and/or wash racks;
 - Implement damp street sweeping;
 - The applicant will develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities; and
 - The applicant will file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB) The project design will conform to the City's Residential Design Guidelines.
- Prior to the issuance of a Planned Development Permit, the applicant will provide details of specific BMPs including, but not limited to, bioswales, disconnected downspouts, landscaping to reduce impervious surface area, and inlets stenciled "No Dumping – Flows to Bay" to the satisfaction of the Director of Planning, Building and Code Enforcement
 - The project will comply with Provision C.3 of NPDES permit Number CAS0299718, which provides enhanced performance standards for the management of stormwater of new development.
 - The project will comply with applicable provisions of the following City Policies – 1) Post-Construction Urban Runoff Management Policy (6-29) which establishes guidelines and minimum BMPs for all projects; and 2) Post-Construction Hydromodification Management Policy (8-14) which provides for numerically-sized (or hydraulically-sized) TCMs.

IX. LAND USE AND PLANNING – The project will not have a significant impact on this resource, therefore no mitigation is required.

X. MINERAL RESOURCES – The project will not have a significant impact on this resource, therefore no mitigation is required.

XI. NOISE –

- An 8-foot-high noise attenuation fence shall be constructed at the pad level of the two lots along Ruby Avenue.
- Mechanical ventilation will be provided in accordance with Uniform Building Code requirements when windows are to be closed for noise control, to the satisfaction of the Chief Building Inspector.
- Prior to issuance of building permits, the developer shall retain a qualified acoustical consultant to check the building plans for all units to ensure that interior noise levels will be attenuated to 45 dB DNL or less through the use of an attenuation fence and/or window controls, to the satisfaction of the Director of Planning, Building and Code Enforcement.
- All units subject to interior noise level exceedances shall be equipped with forced air ventilation systems to allow the occupants the option of maintaining the windows closed to control noise, and maintain an interior noise level of 45 dB DNL.

- Construction activities will be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any onsite or offsite work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- The contractor will use “new technology” power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site will be equipped with adequate mufflers and will be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.
- Stationary noise-generating equipment will be located as far as possible from sensitive receptors. Staging areas will be located a minimum of 200 feet from noise-sensitive receptors, such as residential uses.
- A “noise disturbance coordinator,” who will be responsible for responding to any local complaints about construction noise, will be designated. The disturbance coordinator will determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator will be conspicuously posted at the construction site.

XII. POPULATION AND HOUSING – The project will not have a significant impact on this resource, therefore no mitigation is required.

XIII. PUBLIC SERVICES –

- A school impact fee will be paid to the school districts to offset the increased demands on school facilities caused by the proposed project, in accordance with California Government Code Section 65996.
- The project will conform to the City’s Park Impact Ordinance (PIO) and/or Parkland Dedication Ordinance (PDO) (Municipal Code Chapters 14.25 and 19.38, respectively).

XIV. RECREATION –

- The project will conform to the City’s Park Impact Ordinance (PIO) and/or Parkland Dedication Ordinance (PDO) (Municipal Code Chapters 14.25 and 19.38, respectively).

XV. TRANSPORTATION / TRAFFIC –

- Fees established by the 1995 Benefit Assessment District shall be paid to fund and construct the transportation improvements necessary for the development of the 1 existing allocation within the Evergreen Development Policy Area.
- The Traffic Impact Fee established by the 2008 Evergreen–East Hills Development Policy shall be paid to fund and construct the transportation improvements necessary for the additional development of 9 residential units within the Evergreen–East Hills Development Policy Area.

XVI. UTILITIES AND SERVICE SYSTEMS – The project will not have a significant impact on this resource, therefore no mitigation is required.

XVII. MANDATORY FINDINGS OF SIGNIFICANCE – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **March 30, 2009**, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only;
or
2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulated on: March 9, 2010

Deputy

Adopted on: _____

Deputy

Revised 10..20.08 sbw

Administrative Draft

February 25, 2010

CONSENT AGREEMENT FOR PROPOSED MITIGATION MEASURES WITH MITIGATED NEGATIVE DECLARATION

PROJECT FILE NUMBER: PDC09-028

PROJECT LOCATION: East side of Ruby Avenue, approximately 50 feet northerly of Murillo Avenue (2494 Ruby Avenue); (APN 652-11-010)

PROJECT DESCRIPTION: Planned Development Zoning from A(PD) Planned Development District to A(PD) Planned Development District to allow up to 10 single family detached residences on an approximately 2.5 gross acre site.

In order to reduce any possible significant environmental impacts of the project to a level of insignificance and allow the adoption of a Mitigated Negative Declaration in accordance with the California Environmental Quality Act (Guidelines 15070 (b)(1)), the mitigation measures included herein, with agreement by the applicant, will be incorporated into the project.

I, Mahmood Ghori on behalf of Ruby Estate, LLC, the applicant, hereby agree to fully implement the Mitigation Measures described below which have been developed in conjunction with the preparation of this Mitigated Negative Declaration for my proposed project. I understand that these Mitigation Measures or substantially similar measures are being adopted as conditions of approval with this permit request in order to reduce potential environmental impacts to a less than significant level.

The Environmental issues and Mitigation Measures are as follows:

BIOLOGICAL RESOURCES

- If possible, construction should be scheduled between September and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be conducted by a qualified biologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys shall be conducted no more than thirty (30) days prior to the

initiation of these activities. The surveying biologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the biologist shall, in consultation with the California Department of Fish and Game, designate a construction-free buffer zone (typically 250 feet) around the nest, which shall be maintained until after the breeding season has ended and/or a qualified biologist has determined that the young birds have fledged. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading or building permit.

NOISE

- An 8-foot-high noise attenuation fence shall be constructed at the pad level of the two lots along Ruby Avenue.
- Prior to issuance of building permits, the developer shall retain a qualified acoustical consultant to check the building plans for all units to ensure that interior noise levels will be attenuated to 45 dB DNL or less through the use of an attenuation fence and/or window controls, to the satisfaction of the Director of Planning, Building and Code Enforcement.
- All units subject to interior noise level exceedances shall be equipped with forced air ventilation systems to allow the occupants the option of maintaining the windows closed to control noise, and maintain an interior noise level of 45 dB DNL.

TRANSPORTATION / TRAFFIC

- Fees established by the 1995 Benefit Assessment District shall be paid to fund and construct the transportation improvements necessary for the development of the 1 existing allocation within the Evergreen Development Policy Area.
- The Traffic Impact Fee established by the 2008 Evergreen-East Hills Development Policy shall be paid to fund and construct the transportation improvements necessary for the additional development of 9 residential units within the Evergreen-East Hills Development Policy Area.

Applicant's Signature _____

Date _____